

Special Civil Application No 1548 of 1989

Date of decision: 13th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

CHANDRAKANT CHHOTALAL ADHIA

vs

COMPETENT AUTHORITY

Appearance:

Smt. D.T.Shah, Advocate, for the Petitioner.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

13th February 1996

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 25th June 1985 as amended by his order passed on 5th December 1985 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent

No.2 herein) on 31st December 1988 in Appeal No.Rajkot-20 of 1986 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1337.22 square metres.

2. The facts giving rise to this petition move in a narrow compass. The properties involved in this petition originally belonged to the father of the petitioner, named, Chhotalal Morarji (the deceased for convenience). He appears to have breathed his last some time on or about 13th May 1975 leaving behind him his widow and three sons including the petitioner. It appears that the petitioner filed his declaration in the prescribed form under section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 with respect to the properties left behind by his deceased father within the urban agglomeration of Rajkot. It appears that the declaration was filed on behalf of the family. That declaration was processed by respondent No.1 herein. After observing all necessary formalities according to law, by his order passed on 25th June 1985 under section 8 (4) of the Act, respondent No.1 inter alia declared the holding of the petitioner to be in excess of the ceiling limit by 1337.22 square metres. Its copy is at Annexure-C to this petition. It appears that the order at Annexure-C to this petition contained some clerical errors. Thereupon, the necessary rectification order was passed by respondent No.1 on 5th December 1985. Its copy is at Annexure-D to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. A copy of the memo of appeal is at Annexure-E to this petition. It came to be registered as Appeal No.Rajkot-20 of 1986. It appears that the petitioner filed therein a list of documents. Its copy is at Annexure-F to this petition. After hearing the petitioner, by the order passed on 31st December 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-G to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-C to this petition as rectified by the order at Annexure-D to this petition as affirmed in appeal by the appellate order at Annexure-G to this petition.

3. It may be mentioned that the order at Annexure-C to this petition was with respect to the petitioner and his two other brothers and their mother. The matter was carried in appeal by the petitioner's two brothers and mother before respondent No.2 under section 33 of the Act. Their appeals came to be registered as Appeals Nos.Rajkot-5 of 1986, Rajkot-76 of 1985 and Rajkot-87 of 1985. Those three appeals were heard together and by the common appellate order passed therein on 28th December 1988 respondent No.2 dismissed them. Its copy is at Annexure-J to this petition. It may be noted that the appellate order at

Annexure-G to this petition is based on the common appellate order at Annexure-J to this petition.

4. The order at Annexure-C to this petition as rectified by the order at Annexure-D to this petition as affirmed by the common appellate order at Annexure-J to this petition was challenged before this court in three separate writ petitions bearing Special Civil Applications Nos.1840, 1841 and 1842 of 1989 by the petitioner's two brothers and mother. All the three writ petitions were heard together and by the common judgment rendered therein on 10th October 1995 all the three petitions were accepted and the impugned orders were set aside and the matter was remanded to the Competent authority at Rajkot (respondent No.1 herein) for restoration of the proceeding to file and for his fresh decision according to law in the light of the judgment in those three writ petitions.

5. As aforesaid, the impugned order at Annexure-C to this petition as rectified by the order at Annexure-D to this petition is the common order for the petitioner and his two brothers and mother. That very order as affirmed in appeal by the common appellate order at Annexure-J to this petition was the subject-matter of the aforesaid three writ petitions. As aforesaid, the appellate order at Annexure-G to this petition with respect to the petitioner's appeal has been based on the common appellate order at Annexure-J to this petition. In that view of the matter, this petition should also be disposed of on the basis of the earlier judgment of 10th October 1995 in the aforesaid three writ petitions as questions of fact and law found arising in this petition are similar to, if not altogether identical with, those arising in the aforesaid three writ petitions.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-C to this petition as rectified by the order at Annexure-D to this petition as affirmed in appeal by the appellate order at Annexure-G to this petition deserves to be quashed and set aside. The matter deserves to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine read with the judgment of this court in Special Civil Applications Nos.1840, 1841 and 1842 of 1989 decided on 10th October 1995.

7. In the result, this petition is accepted. The order passed by the Competent Court at Rajkot (respondent No.1 herein) on 25th June 1985 at Annexure-C to this petition as rectified by the order passed by him on 5th December 1985 at Annexure-D to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 31st December 1988 in Appeal No.Rajkot-20 of 1986 at Annexure-G to this petition is

quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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